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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,324	11/20/2003	Justin E. McDonough	MBI-1136DIV1	1057
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KNOBLE, YOSHIDA & DUNLEAVY EIGHT PENN CENTER SUITE 1350, 1628 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19103			EXAMINER GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/718,324		Applicant(s) MCDONOUGH ET AL.	
	Examiner Harry A. Grosso		Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 15 August 2005.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-36 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-36 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 8-10, 16-18 and 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado, of record, in view of Valyi (4,289,817).
3. Regarding claim 1, Adado discloses a drinking cup (12, Figures 6-7 and column 4, lines 3-6) with an elastomeric outer sleeve (14, Figures 6-7, abstract and column 4, lines 33-40). Adado does not teach that the outer sleeve is overmolded to the cup. Valyi discloses a drinking cup with an inner body (23, Figures 2A) and a single layer overmolding formed over the body (35, column 3, line 66 to column 4, line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an inner body and a single layer overmolding formed over the body as disclosed by Valyi in the drinking cup disclosed by Adado to provide a method of producing the drinking cup that does not require the extra step of forming a sleeve from sheet material or the use of adhesive to secure the overmolding to the body.
4. Regarding claim 2, Valyi discloses the overmolding covers the bottom of the body to protect the body (Figure 2A). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an

overmolding that completely covers the bottom of the body as disclosed by Valyi in the drinking cup disclosed by Adado to add strength and increase protection to the body of the drinking cup.

5. Regarding claim 3, Adado discloses the features recited in claim 3 (Figure 6).
6. Regarding claim 8, Adado, as modified, discloses a cup made of polypropylene with an elastomeric overmolding of polyolefin foam material.
7. Regarding claims 9 and 10, the invention of Adado would inherently possess these capabilities.
8. Regarding claim 16, it has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *Thorpe*, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983). The examiner considers the phrase "bi-component molding" to constitute a product by process limitation that does not materially affect the structure of the product, a drinking cup with an overmolding, which is disclosed by Adado and Valyi.
9. Regarding claim 17, Valyi disclosed the overmolding process results in a composite container (column 4, lines 2-10). The examiner takes official notice that it is

well known in the art that the molding process as disclosed by Valyi would result in a fusion bond between the body and the overmolding.

10. Regarding claim 18, the examiner considers the phrase "two-shot injection molding" to constitute a product by process limitation that does not materially affect the structure of the product, a drinking cup with an overmolding, which is disclosed by Adado and Valyi. See paragraph 5.

11. Regarding claims 21 and 28, Adado discloses a drinking cup usable by a child fabricated from a first material (12, column 4, lines 3-7) and a second material (14, column 4, lines 33-40), with a lid (16, Figures 6 and 7, column 3, lines 65-66) and the first material of Adado would be harder (have a higher durometer value) than the second material of Adado. Adado does not teach that the second material is integrally molded to the first material. Valyi discloses a drinking cup with a first material (23, Figures 2A) and a second material integrally molded to the first material (35, column 3, line 66 to column 4, line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a first material and a second material integrally molded to the first material as disclosed by Valyi in the drinking cup disclosed by Adado to provide a method of producing the drinking cup that does not require the extra step of forming a sleeve from sheet material or the use of adhesive to secure the first material to the second material.

12. Regarding claims 23 and 29, Adado discloses the first material is polypropylene (column 4, lines 3-7).

13. Regarding claims 24 and 30, Adado discloses the second material is a thermoplastic elastomer (column 4, lines 33-40).

14. Regarding claims 25 and 31, Valyi disclosed the molding process results in a composite container (column 4, lines 2-10). The examiner takes official notice that it is well known in the art that the molding process as disclosed by Valyi would result in a fusion bond between the first material and the second material.

15. Regarding claims 26 and 32, Adado discloses the first material is polypropylene and the second material is a TPE, thus the fusion bond would be a TPE/polypropylene bond.

16. Regarding claims 27, 33 and 34, Adado discloses the second material forms a perimeter of a portion of the first material and substantially surrounds a portion of the first material.

17. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Valyi as applied to claim 3 above, and further in view of Tunberg (4,548,349). The drinking cup of claim 3 is disclosed by Adado and Valyi but they do not teach that the overmolding has ribs. Tunberg discloses an overmolding with a plurality of ribs formed by the surface (18) and grooves (19) extending circumferentially about the body to provide a roughened surface to improve gripping of the cup. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an overmolding with a plurality of ribs extending circumferentially about the body as disclosed by Tunberg in the drinking cup disclosed by Adado to provide a roughened surface to improve gripping of the cup.

18. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado, Valyi and Tunberg as applied to claim 5 above in view of Hirata et al (4,818,575). The cup of claim 5 is disclosed but the use of longitudinal depressions in the body is not taught. Hirata et al discloses a molded multilayer container with longitudinal depressions (57, Figures 6 and 8) in the body of the container for gripping the container and the overmolding layer (3, Figure 3) covers the depressions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of longitudinal depressions in the body of the container gripping the container and the overmolding layer that covers the depressions as disclosed by Hirata et al in the drinking cup disclosed by in claim 5 for gripping the drinking cup.

19. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Valyi in view of Holloway et al (5,201,893) and Heldingsfeld (5,545,707).

20. Adado and Valyi disclose the drinking cup of claim 1 but do not teach that the body is made of clarified, translucent polypropylene. Holloway et al discloses a cup made of translucent clarified polypropylene, which is non-toxic to humans, relatively rigid and easily sterilizable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a cup body made of translucent clarified polypropylene as disclosed by Holloway et al in the drinking cup disclosed by Adado to provide a drinking cup that is non-toxic to humans, relatively rigid and easily sterilizable.

21. Adado and Valyi also do not teach that the overmolding is an opaque thermoplastic elastomer. Heldingsfeld discloses thermoplastic polyurethane elastomers that are well known and have high-grade mechanical properties due to thermoplastic workability (column 1, lines 11-14). Heldingsfeld further discloses that opaque thermoplastic polyurethane elastomers are more desirable because they may be readily processed to films while transparent ones are less suitable for this purpose. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of opaque thermoplastic polyurethane elastomers) as disclosed by Holloway et al in the overmolding of the drinking cup disclosed by Adado and Valyi because they are well known and have high-grade mechanical properties due to thermoplastic workability and may be readily processed to films.

22. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Valyi in view of Goth (5,197,618). Adado and Valyi disclose the drinking cup of claim 18 with an overmolding made from a thermoplastic elastomer (TPE) but do not teach that the overmolding is fusion bonded to the body with a bond strength greater than the tensile strength of the overmolding material. Goth discloses a fusion bond of a liner with a heat seal polymer to a container and the fusion bond is stronger than the tensile strength of the polymer material so that a residue of the polymer material is left on the container if the liner is removed providing tamper evidence (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a fusion bond of a liner (overmolding) with a heat seal polymer to a container with the fusion bond stronger than the tensile strength of the

polymer material as disclosed by Goth in the drinking cup disclosed by Adado and Valyi so that a residue of the polymer material is left on the container if the liner is removed providing a tamper evidence.

23. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Valyi in claim 18 in view of Holloway et al. The drinking cup of claim 18 is disclosed but Adado and Valyi do not teach that the cup body is made from clarified polypropylene. Holloway et al discloses a cup made of clarified polypropylene as discussed in paragraph 16 above.

24. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adado as modified in claim 19 above in view of Wehnert, III (Wehnert) (4,815,628). The drinking cup of claim 19 is disclosed but Adado does not teach a durometer value for the overmolding. Wehnert discloses an overmolding (10, Figure 4) with a durometer in the range of 40 to 70 Shore A (column 1, lines 47-51) to provide a highly elastomeric material for tight fitting overmolding. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use an overmolding with a durometer in the range of 40 to 70 Shore A as disclosed by Wehnert in the drinking cup disclosed by Adado to provide a highly elastomeric material for tight fitting overmolding.

25. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Valyi in view of Coy (4,946,062),

26. Regarding claim 35, Adado and Valyi disclose the invention of claim 28 but do not teach the use of a valve in the lid. Coy discloses a child's drinking cup with a lid and

the lid has a spout (9) with a valve (V, Figure 1, column 3, lines 26-32) to prevent spillage (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a spout with a valve as disclosed by Coy in the drinking cup disclosed by Adado and Coy to protect against spillage.

27. Regarding claim 36, Adado and Valyi disclose a feeding device (drinking cup) with a body, a lid and a gripping area consisting of a first material with a second material molded over it; the first material (polypropylene) would have a harder durometer value than the second material (a foam TPE) and the second material substantially surrounds a portion of the first material. Adado and Valyi do not teach the use of a valve in the lid. Coy discloses a child's drinking cup with a lid and the lid has a spout (9) with a valve (V, Figure 1, column 3, lines 26-32) to prevent spillage (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a spout with a valve as disclosed by Coy in the drinking cup disclosed by Adado and Coy to protect against spillage.

Response to Arguments

Applicant's arguments filed August 15, 2005 have been fully considered but they are not persuasive. Applicant argues that Adado does not disclose a single layer elastic overmolding but rather a sheath with more than one layer adhesively attached to the body. In response, the added prior art reference, Valyi discloses a single layer overmolding partially covering the body of the drinking cup. This teaching combined with Adado discloses the claimed drinking cup.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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